

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BARING INDUSTRIES, INC.,

Civil Action No. 19-CV-2829(JGK)(SN)

Plaintiff,

Honorable John G. Koeltl
United States District Judge

-against-

3 BP PROPERTY OWNER LLC, DADONG
CATERING LLC, WESTCHESTER FIRE
INSURANCE COMPANY, DONE RIGHT
HOOD & FIRE SAFETY INC.,
AA JEDSON COMPANY LLC,

ORDER

Defendants.
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THIS MATTER having come before the Court on the Motion by plaintiff Baring Industries, Inc. (“Baring”) for a stay of enforcement of the Judgment entered in this action pending its appeal therefrom without having to post a bond or other security (the “Motion,” ECF Nos. 210-211; 215-216), and defendant 3 BP Property Owner LLC (“3 BP Property”) having opposed the Motion, and the Court, for the reasons stated during oral argument and as set forth in its Order, entered December 22, 2022 (ECF No. 218), denied the Motion and directed Baring to post a supersedeas bond by 11:59 p.m. on January 9, 2023 to the extent it seeks to stay 3 BP Property and Westchester Fire Insurance Company’s (“WFIC”, together with 3 BP Property, “Defendants”) enforcement of the Judgment pending Baring’s appeal therefrom;

IT IS on this 4TH day of January, 2023,

ORDERED, that Baring’s Motion is hereby denied; and it is further

ORDERED, that Defendants’ enforcement of the Judgment shall be stayed until January 10, 2023 to permit Baring to post a supersedeas bond as provided herein; and it is further

ORDERED, that Defendants' enforcement of the Judgment shall be further stayed pending the determination of Baring's appeal to the United States Court of Appeals for the Second Circuit ("Court of Appeals"), upon Baring's filing of a supersedeas bond as provided herein with the Clerk of this Court for approval by the Court, together with a motion to approve the supersedeas bond, pursuant to Fed. R. Civ. P. 62(b), on or before January 9, 2023, in the total amount of \$915,677.75 (the "Supersedeas Bond"), representing the Judgment amount of \$875,599.67 plus post-judgment interest thereon at the statutory rate of 4.68% (the "Statutory Rate") from November 17, 2022 through and including November 16, 2023 in the amount of \$40,078.06 pursuant to Fed. R. Civ. P. 61; and it is further

ORDERED, that said Supersedeas Bond shall be conditioned on the fidelity's or surety's payment to 3 BP Property of [a] the Judgment amount of \$875,599.67 and post-judgment interest thereon at the Statutory Rate as provided herein from and after November 17, 2022 through and including the date of payment on said bond by the fidelity or surety (but in no event beyond the maximum amount of \$915,677.75) in the event the appeal is dismissed or the Judgment is affirmed, or [b] the amount determined to be due under the Judgment in the event that the Judgment is modified by the Court of Appeals on appeal or by the District Court after remand, and further that the fidelity or surety company executing the Supersedeas Bond shall be in compliance with 31 U.S.C. §§ 9304-9306 and Local Rule 65.1.1; and it is further

ORDERED, that notwithstanding anything contained herein, Defendants or their attorneys shall be permitted immediately to file certified copies of the Judgment or any other papers with the New York County Clerk or the Supreme Court of the State of New York, County of New York, and take such other actions as may be necessary to discharge or cancel of record the Bond Discharging Mechanic's Lien, Bond # K 15301971, issued by WFIC and filed with the

New York County Clerk and securing that certain mechanic's lien filed by Baring against the real property located at 3 Bryant Park, a/k/a 120 West 42nd Street, a/k/a 1095 Avenue of the Americas, New York, NY (Block 994, Lot 1011 on the Tax Map of the City of New York, County of New York); and it is further

ORDERED, that upon the earlier to occur of Baring's failure to post the Supersedeas Bond as provided herein by 11:59 p.m. on January 9, 2023 or the Court's declining to approve the Supersedeas Bond pursuant to Fed. R. Civ. P. 62 then, unless otherwise ordered by the Court, the interim stay granted herein shall dissolve without further act or notice and Defendants shall have execution of the Judgment; and it is further

ORDERED, that nothing contained herein shall relieve (i) Baring's liability, if any, for all sums in excess of the amount of the Supersedeas Bond in the event it is insufficient to satisfy the Judgment in full, or otherwise under N.Y. Lien Law; and (ii) 3 BP Property's liability, if any, in the event that the Judgment or decision of the District Court is reversed or modified by the Court of Appeals and Baring's lien foreclosure claim is reinstated.

Dated: New York, New York
January 4, 2023

ENTER:


HON. JOHN G. KOELTL, U.S.D.J.